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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

ARCO Products Company, Mobil Oil  
Corporation, Texaco Refining and Marketing,  
Inc., and Equilon Enterprises, LLC,

Complainants,

vs.

Santa Fe Pacific Pipeline, L.P.,

Defendant.

Case 97-04-025  
(Filed April 7, 1997)

ARCO Products Company, A Division of Atlantic  
Richfield Company (ARCO) and Mobil Oil  
Corporation (MOBIL),

Complainants,

vs.

SFPP, L.P.,

Defendant.

Case 00-04-013  
(Filed April 10, 2000)

In the Matter of the Application of SFPP, L.P. for  
Authority to Justify Its Rates for Intrastate  
Transportation of Refined Petroleum Products on  
the Basis of Market Factors.

Application 00-03-044  
(Filed March 16, 2000)

Application of SFPP, LP pursuant to Commission

Application 03-02-027

Resolution No. O-0043 issued October 24, 2002.	(Filed February 21, 2003)
Application of SFPP, L.P. for authority, pursuant to Public Utilities Code Section 455.3, to increase its rates for pipeline transportation services within California.	Application 04-11-017 (Filed November 16, 2004)
Application of SFPP, L.P. for authority, pursuant to Public Utilities Code Section 455.3, to increase its rates for pipeline transportation services within California.	Application 06-01-015 (Filed January 26, 2006)

**ADMINISTRATIVE LAW JUDGE'S RULING  
CONSOLIDATING PROCEEDINGS AND  
SETTING A JOINT PREHEARING CONFERENCE**

**Summary**

This ruling consolidates the six captioned proceedings and sets a prehearing conference to discuss a framework for mandatory settlement discussions and establish a reporting schedule.

**Background**

Case (C.) 97-04-025 was filed on April 7, 1997 against SFPP, L.P. (SFPP). SFPP operates a network of pipelines for the transportation of refined petroleum products, such as gasoline, diesel, and jet fuel. Most of this network provides public utility service and is economically regulated by both this Commission (CPUC) and the Federal Energy Regulatory Commission (FERC). SFPP asserts that small portions of the network were not built to provide utility service to the public and, should therefore, remain unregulated. By Decision (D.) 99-06-093

(1 *CPUC 3d 418*), the Commission granted rehearing of D.98-08-033 (81 *CPUC 2d 573*). Rehearing was to reconsider four disputed issues: (1) the public utility status of the Sepulveda Line, (2) the proper ratemaking treatment of partnership tax expenses, and (3) calculation of environmental costs. And, because the Decision's findings on these issues supported the ultimate conclusion of D.98-08-033 on the proper ratemaking treatment for the Watson Station facilities, the rehearing was to reconsider that conclusion (issue 4) as well.

The Commission dismissed a second application for rehearing filed by SFPP in D.99-09-038 (2 *CPUC 3d 344*). That application alleged the Commission erred when D.99-06-093 granted rehearing of the first decision (D.98-08-033) in this proceeding. The Commission concluded the second application for rehearing did not show error and was not the proper vehicle for raising SFPP's claims. Therefore, the remaining issues in C.97-04-025 are those identified by D.99-06-093.

Subsequent to C.97-04-025, SFPP filed four separate applications for rate increases: Application (A.) 00-03-044, filed March 16, 2000; A.03-02-027, filed February 21, 2003; A.04-11-017, filed November 16, 2004; and A.06-01-015, filed January 26, 2006. These applications all seek an increase in retail rates and were implemented subject to refund pursuant to Pub. Util. Code § 455.3 upon the 30-day notice.<sup>1</sup> There were timely protests for all applications. Additionally,

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<sup>1</sup> Section 455.3. "(a) Notwithstanding any other provision of law, including, but not limited to Section 454, no later than January 1, 1998, the commission shall adopt rules and regulations that substantially revise the manner in which oil pipeline corporations may change and use rates.

(b) The revised rules and regulations shall adhere to the following criteria:

(1) Pipeline corporations shall be required to give the commission and all shippers no less than 30 days' notice of rate changes.

*Footnote continued on next page*

C.00-04-013, another complaint, was filed on April 10, 2000. The Commission has not consolidated any combination of these proceedings pursuant to Commission Rule 55 of the Commission's Rules of Practice and Procedure.<sup>2</sup> There have been no evidentiary hearings in A.04-11-017 or A.06-01-015. The Commission conducted evidentiary hearings, on an unconsolidated basis, for:

- Rehearing of D.98-08-033 on October 23-27, 2000;
- A.00-03-044 on February 1, 2, 5, and 6, 2001;
- C.00-04-013 on February 1, 2, 5, and 6, 2001;
- A.03-02-027 on December 9-12, 2003.

Absent a decision on rehearing D.98-08-033, these later cases have lingered unresolved: the parties repeat the same or similar updated positions, and await

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(2) After the 30-day notice of rate change, pipeline corporations shall be permitted to change rates and use those rates prior to commission approval.

(3) The commission shall have the authority to suspend a rate change and use of the changed rate for a period of time not to exceed 30 days from expiration of the 30-day notice period specified in paragraph (1).

(4) Pipeline corporations shall refund, with interest, any portion of the rate change that is subsequently disallowed by the commission to all shippers within 30 days of the commission's decision becoming final. Interest shall accrue from the date the new rate is first charged.

(5) Any increase in the shipping rate charged by an oil pipeline corporation prior to commission approval shall not exceed 10 percent per 12-month period. The commission shall determine the appropriateness of allowing retroactive charge and collection of subsequently approved rate increases above 10 percent.

(c) It is the intent of the Legislature that oil pipeline corporations be permitted to use new rates after the period of the suspension of a rate change, if any, by the commission pursuant to paragraph (3) of subdivision (b) prior to commission approval, provided any disallowed portion of the new rate is fully refunded with interest."

<sup>2</sup> "Proceedings involving related questions of law or fact may be consolidated." That is, consolidation is a discretionary act.

guidance on specific detailed issues in the rehearing of C.97-04-025. We have set this rehearing aside for too long: the oldest complaint has had three successive assigned Commissioners and six successive assigned administrative law judges. We must put this case to rest<sup>3</sup> in an informed fashion: applicant, complainants, and protestants must then move forward on resolving the balance of SFPP's pending proceedings.

### **Burden of Proof**

The applicant alone bears the burden of proof to show that the rates it requests are just and reasonable and the related ratemaking mechanisms are fair when applying for new rates. However, as stated in D.98-08-033, the burden of proving that already approved rates were unreasonable is on Complainants in accordance with our longstanding procedure. The decision on rehearing also "determined the correct policy is to place the burden of proof on the party seeking to disturb the established rate scheme." Thus, both SFPP and the various complainants or protestants all have an obligation to meet their various burdens of persuasion in order to prevail before the Commission.

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<sup>3</sup> SFPP et al. risks becoming much like another example: "Jarndyce and Jarndyce drones on. This scarecrow of a suit has, in course of time, become so complicated that no man alive knows what it means. . . . a long procession of Chancellors has come in and gone out; the legion of bills in the suit have been transformed into mere bills of mortality; there are not three Jarndyces left upon the earth perhaps since old Tom Jarndyce in despair blew his brains out at a coffee-house in Chancery Lane; but Jarndyce and Jarndyce still drags its dreary length before the court, perennially hopeless." *Bleak House*, by Charles Dickens. (P. 6, Modern Library Classics Edition, 2002.)

## **Discussion**

Consolidation of these proceedings will expedite a settlement of the issues; many of which flow from the oldest complaint to the newest application.

The record in the four older proceedings is stale and confused – parties have, for example, made numerous motions to introduce various documents filed at FERC or introduce various FERC documents. In the two most recent proceedings, A.04-11-017 and A.06-01-015, the record is incomplete.

The parties are in the best position to resolve these cases: They know the issues, and there are very similar or identical issues the parties have already repeatedly litigated before the FERC. Secondly, these proceedings affect only a very few, but well defined, parties of interest. SFPP serves only a few customers, and they have shown themselves to be represented by experienced and able counsel with access to expert assistance.

Therefore I direct the parties to prepare a settlement plan, similar to a case management plan, in that it will address: schedules and details related to timely completion of any outstanding discovery; determining agreed upon facts; identifying agreed upon applicable law and precedents; and a process to negotiate a series of ratesetting settlements to conclude these proceedings.

The parties must meet and confer to develop a settlement plan prior to the prehearing conference scheduled for October 17, 2006.<sup>4</sup> SFPP must initiate the process and schedule the initial session. I expect all parties to be invited to participate in every session and all correspondence for the meet and confer –

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<sup>4</sup> Parties may meet in person, by telephone, or by electronic communications, provided at least the first and final communications include “real-time” voice dialogue and are not solely electronic messaging.

except whenever Complainants/Protestants meet as a group without SFPP, the defendant/applicant. At the prehearing conference, parties must be prepared to propose a schedule to conclude these proceedings in an expeditious manner.

I expect the parties to address settlements on the four identified issues in the rehearing of D.98-08-033 and then successively identify and settle the disputed issues in C.00-04-013. Settling these complaints should then provide a basis to settle the four outstanding rate increase applications that have ratemaking assumptions grounded in the disputes – e.g., an income tax allowance.

I expect the parties to be able to engage in effective settlement negotiations and, if they chose, to engage an independent mediator or facilitator. If the parties are unable or unwilling to agree on a process, the Commission may provide a settlement judge to assist with alternative dispute resolution processes including mediation or an early neutral evaluation followed by further settlement talks. Only if necessary, parties may be required to serve updated testimony for evidentiary hearings on all six proceedings.

Therefore, **IT IS RULED** that:

1. Case (C.) 97-04-025, C.00-04-013, Application (A.) 00-03-044, A.03-02-027, A.04-11-017, and A.06-01-015 are consolidated pursuant to Rule 55 of the Commission's Rules of Practice and Procedure.
2. A Settlement Prehearing Conference is scheduled for October 17, 2006, at 11 a.m. at the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California.
3. Following a meet and confer process, parties shall serve on the assigned Administrative Law Judge a proposed Settlement Plan no later than October 10, 2006 that provides a means to fairly resolve and close these proceedings.

Dated August 25, 2006, at San Francisco, California.

/s/ DOUGLAS M. LONG

Douglas M. Long  
Administrative Law Judge



### **INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated August 25, 2006, at San Francisco, California.

/s/ KE HUANG

Ke Huang

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\*\*\*\*\* APPEARANCES \*\*\*\*\*

Elisabeth R. Myers  
BLACKWELL SANDERS PEPER MARTIN  
750 17TH STREET, N.W., SUITE 1000  
WASHINGTON DC 20036  
(202) 378-2307  
emyers@blackwellsanders.com  
For: BP West Coast Products and ExxonMobil Oil Corporation

Elisabeth R. Myers  
Attorney At Law  
BLACKWELL SANDERS PEPER MARTIN LLP  
SUITE 300  
1737 H STREET, N.W.  
WASHINGTON DC 20006  
(202) 378-2307  
emyers@blackwellsanders.com  
For: BP West Coast Products/ExxonMobil Oil Corporation

D. T. Sherman  
Associate General Counsel  
CHEVRON PRODUCTS COMPANY  
PO BOX 5044  
SAN RAMON CA 94583  
(510) 242-7300

Barron Dowling  
300 CONCORD PLAZA DRIVE  
SAN ANTONIO TX 78216  
(210) 283-2415  
bdowling@tsocorp.com  
For: Tesoro Refining and Marketing Company

Matthew A. Corcoran  
GOLDSTEIN & ASSOCIATES, P. C.  
1757 P STREET, N.W.  
WASHINGTON DC 20036  
(202) 872-8740  
mcorcoran@goldstein-law.com  
For: Tesoro Refining and Marketing Company

Melvin Goldstein  
GOLDSTEIN & ASSOCIATES, P.C.  
1757 P STREET, N.W.  
WASHINGTON DC 20036  
(202) 872-8740  
mgoldstein@goldstein-law.com  
For: Tesoro Refining and Marketing Company

James D. Squeri  
Attorney At Law  
GOODIN MACBRIDE SQUERI RITCHIE & DAY LLP  
505 SANSOME STREET, SUITE 900  
SAN FRANCISCO CA 94111  
(415) 392-7900  
jsqueri@gmssr.com  
For: SANTA FE PACIFIC PIPELINE, L.P.

John B. Merritt  
Attorney At Law  
140 S. LAKE, SUITE 328  
PASADENA CA 91101  
(616) 449-8045  
jbm@manda-law.com  
For: ARCO, Exxon-Mobil

Robert W. Kneisley  
Associate General Counsel  
SOUTHWEST AIRLINES CO.  
1901 L STREET, N.W., SUITE 640  
WASHINGTON DC 20036

John B Merritt  
TRAVIS & GOOCH  
34820 N DESERT RIDGE DR.  
SCOTTSDALE AZ 05282-1104  
jackmerritt@earthlink.net  
For: Exxon-Mobil & BP

R. Gordon Gooch  
Attorney At Law  
TRAVIS & GOOCH  
851 NORTH GLEBE ROAD, SUITE 1911  
ARLINGTON VA 22203  
(301) 656-1293  
gordon\_gooch@earthlink.net  
For: BP West Coast Products & Exxon-Mobil Corporation

Andrew J. Dalton  
VALERO ENERGY COMPANY  
ONE VALERO PLACE, ROOM 264  
SAN ANTONIO TX 78212-3186

Richard E. Powers, Jr.  
VENABLE LLP  
575 7TH STREET N.W.  
WASHINGTON DC 20004-1601  
(202) 344-4631  
repowers@venable.com

\*\*\*\*\* SERVICE LIST \*\*\*\*\*

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Steven A Adducci  
Attorney At Law  
VENABLE LLP  
575 7TH STREET, N.W.  
WASHINGTON DC 20004-1601  
(202) 344-4631  
saadducci@venable.com  
For: Ultramar Inc.

Steven A. Adducci  
JUDITH M. ANDRADE  
Attorney At Law  
VENABLE LLP  
575 7TH STREET N.W.  
WASHINGTON DC 20004-1601  
(202) 344-4631  
saadducci@venable.com  
For: Valero Marketing and Supply Company & Ultramar Inc.

George L Weber  
WEBER & ASSOCIATES  
1000 CONNECTICUT AVE., N.W.  
WASHINGTON DC 20036  
(202) 628-0260  
GLweber44@aol.com  
For: Chevron Products Company/Texaco Refining and  
Marketing, Inc.

George L. Weber  
WEBER & ASSOCIATES, P.C.  
1800 PILLORY DRIVE  
VIENNA VA 22182  
(202) 628-0200  
glweber44@aol.com  
For: Chevron, TRMI, EQUILON

\*\*\*\*\* STATE EMPLOYEE \*\*\*\*\*

Donald J. Lafrenz

Energy Division  
AREA 4-A  
505 VAN NESS AVE  
San Francisco CA 94102  
(415) 703-1063  
dlf@cpuc.ca.gov  
For: CPUC-ENERGY DIVISION

Douglas M. Long  
Administrative Law Judge Division  
RM. 5023  
505 VAN NESS AVE  
San Francisco CA 94102  
(415) 703-3200  
dug@cpuc.ca.gov

Maurice Monson  
Energy Division  
AREA 4-A  
505 VAN NESS AVE  
San Francisco CA 94102  
(415) 703-3072  
mdm@cpuc.ca.gov

Vahak Petrossian  
Consumer Protection & Safety Division  
RM. 500  
320 WEST 4TH STREET SUITE 500  
Los Angeles CA 90013  
(213) 576-7077  
vap@cpuc.ca.gov

Paul Wuerstle 3  
Consumer Protection & Safety Division  
RM. 2107  
505 VAN NESS AVE  
San Francisco CA 94102  
(415) 703-2183  
pwu@cpuc.ca.gov

\*\*\*\*\* INFORMATION ONLY \*\*\*\*\*

John Burkholder  
BETA CONSULTING  
2023 TUDOR LANE  
FALLBROOK CA 92028  
(760) 723-1831  
burkee@cts.com

Elizabeth E. Atlee  
BP AMERICA INC.  
6 CENTERPOINTE DRIVE, RM. 549  
LA PALMA CA 90623  
(714) 228-6726  
Elizabeth.atlee@bp.com

Scott Blaising  
Attorney At Law  
BRAUN & BLAISING, P.C.  
915 L STREET, STE. 1420  
SACRAMENTO CA 95814  
(916) 682-9702  
blaising@braunlegal.com

Larry E. Farrens  
CALIFORNIA TRUCKING ASSOCIATION  
3251 BEACON BOULEVARD  
WEST SACRAMENTO CA 95691  
(916) 447-1175

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\*\*\*\*\* SERVICE LIST \*\*\*\*\*

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Jon N. Robbins  
CHEVRON PRODUCTS COMPANY  
ROOM T4276  
6001 BOLLINGER CANYON ROAD  
SAN RAMON CA 94583

Doug Garrett  
COX CALIFORNIA TELCOM, LLC  
2200 POWELL STREET, SUITE 1035  
EMERYVILLE CA 94608-2618  
(510) 923-6220

Paul M. Premo  
ENERGY ECONOMICS CONSULTING  
310 HAZEL AVENUE  
MILL VALLEY CA 94941-5054  
(415) 383-6333  
paulpremo@msn.com  
For: Energy Economics Consulting

Barbara Hickel  
EQUILON ENTERPRISES  
910 LOUISIANA  
HOUSTON TX 77210  
For: Equilon Enterprises

Noreen Tama  
MOBIL OIL CORPORATION  
3225 GALLOWS ROAD  
FAIRFAX VA 22037  
(703) 846-1712  
noreen.m.tama@exxonmobil.com  
For: Mobil Oil

Bruce Foster  
Vice President  
SOUTHERN CALIFORNIA EDISON COMPANY  
601 VAN NESS AVENUE, STE. 2040  
SAN FRANCISCO CA 94102  
(415) 775-1856  
bruce.foster@sce.com

Ronald Broberg  
President  
TRUCKING SUPPORT SERVICES TEAM  
PO BOX 1608  
PLACERVILLE CA 95667

**(END OF SERVICE LIST)**